

INDIANA UTILITY REGULATORY COMMISSION

DEC 11 2002

INDIANA UTILITY
REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF)
 INDIANA BELL TELEPHONE COMPANY,)
 INCORPORATED D/B/A AMERITECH INDIANA)
 PURSUANT TO I.C. 8-1-2-61 FOR A THREE) CAUSE NO. 41657
 PHASE PROCESS FOR COMMISSION) (Phase 2)
 PREVIEW OF VARIOUS SUBMISSION OF)
 AMERITECH INDIANA TO SHOW COMPLIANCE)
 WITH SECTION 271(C) OF THE)
 TELECOMMUNICATIONS ACT OF 1996.)

**INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR'S INITIAL COMMENTS
 CONCERNING THE STATUS OF AMERITECH INDIANA'S ALLEGED COMPLIANCE
 WITH MARKET OPENING REQUIREMENTS IN 47 U.S.C. § 271(c)**

The Indiana Office of Utility Consumer Counselor ("OUCC" or "Public"), the statutory representative of Indiana utility ratepayers, consumers and the public pursuant to IND. CODE § 8-1-1.1-4.1, submits the following initial comments concerning the status of Ameritech Indiana's ("Ameritech's") alleged compliance with the market opening requirements in 47 U.S.C. § 271(c), as addressed by Ameritech in its September 26, 2002, filing, intended to initiate Phase 2 of this proceeding before the Indiana Utility Regulatory Commission ("IURC").

As a preliminary matter, the OUCC notes that, given pending state and federal appeals initiated by Ameritech challenging key IURC rulings on (1.) wholesale pricing and tariffing issues in Cause No. 40611 and Cause No. 40611-S1 (Phase 1), and (2.) adoption of a state remedy plan by the IURC in Cause No. 41657, Ameritech's claim that it has already opened the local exchange market inside its incumbent local exchange carrier

("ILEC") service territory to competition is premature. By pursuing multiple appeals in multiple courts, Ameritech will stretch not only its own resources, but those of its competitive local exchange carrier ("CLEC") competitors. The OUCC believes that Ameritech's time would be better spent addressing, and hopefully resolving, long-standing problems in its wholesale service performance. The OUCC also believes that it is unfair to Indiana's ever-shrinking CLEC community to require them to continue what has proven to be long and time-consuming work in establishing wholesale performance measures and monitoring the ongoing testing of Ameritech's compliance with those requirements in Phase 1 of this proceeding, while also defending several key IURC Orders in multiple appeals, each filed both in state appellate and federal district courts in Indiana, while at the same time providing a meaningful critique of Ameritech's claimed compliance with 47 U.S.C. § 271 market-opening requirements. The OUCC believes that it is not appropriate for the Commission to saddle Indiana's CLEC community with the additional litigation burden associated with Ameritech's premature filings on checklist compliance issues in Phase 2 of this proceeding. The pending appeals alone will delay Ameritech's compliance with 47 U.S.C. § 271(c) for many months – perhaps even more than a year. It is unreasonable for Ameritech to require immediate proceedings on checklist compliance when its actions continue to delay any finding of a truly open local exchange market in Ameritech's Indiana's ILEC service territory. Accordingly, the OUCC urges the Commission to put checklist compliance review on hold until fundamental issues have been resolved (e.g., unbundled network element pricing, performance measurement compliance testing, and development of a remedy plan that will effectively prevent

backsliding by Ameritech once wholesale service problems are corrected). Even if the IURC decides not to put these Phase 2 proceedings on hold at this time, certainly the above considerations weigh against a finding that Ameritech has irreversibly opened its monopoly local exchange market's door to competition.

The OUCC also points to the IURC's analysis of the development of competition in Indiana's local exchange market since the passage of the Telecommunications Act of 1996 ("TA-96"), as documented in the IURC's Annual Reports to the Regulatory Flexibility Committee (a committee established by the Indiana General Assembly to monitor the development of utility competition in Indiana). Those reports are available on the IURC's web page: www.state.in.us/iurc. The reports show that Indiana is significantly behind other states in the development of competition in the local exchange service market. Indeed, the most recent report clearly documents Ameritech's continued monopoly market power in Indiana. The reasons for Ameritech's continued dominance will no doubt be debated by the CLECs participating in this proceeding. However, regardless of the reasons, the fact remains that Ameritech continues to enjoy monopoly market power inside its ILEC service territory in Indiana; and given the continued uncertainty concerning Ameritech's wholesale service offerings in Indiana, the OUCC does not expect to see that market power significantly reduced any time soon.

The testing of Ameritech's operational support system ("OSS") in Phase 1 of this proceeding is still not complete – due in large part to certain data integrity problems encountered by the independent third-party conducting the OSS testing for the IURC. This delay is certainly relevant to the timing of Ameritech's checklist compliance proceedings, as

previously discussed above. However, the underlying data integrity problems are a much more fundamental concern to Indiana's CLEC community and to CLECs choosing not to enter the Indiana market. Until CLECs can trust that their orders will be correctly and smoothly processed and that they will be accurately and fairly billed for services or UNEs purchased from Ameritech, their entry into Indiana's competitive local exchange market will be severely restricted. Until CLECs are able to trust the integrity of Ameritech's wholesale service operations and its recording of wholesale performance results, the risk of proceeding with competitive entry in Ameritech's ILEC service territory will outweigh the expected gains. If CLECs are not able to provide quality service to their customers due to problems with Ameritech's wholesale service processes or systems, they stand to lose not only existing customers, but prospective customers that hear about service interruptions, missing service options, and billing problems encountered by customers who switched from Ameritech to a CLEC, only to switch back to Ameritech after experiencing service problems that could and should have been avoided if Ameritech's wholesale service processes and systems had been working properly. If Ameritech's OSS records fail to properly document system errors uniquely within Ameritech's control, CLECs risk losing their own business reputation by entering the market in Ameritech service territory before Ameritech's OSS problems have been identified, properly documented, remedied and resolved. Accordingly, Ameritech's OSS data integrity problems have not only caused delay in the ongoing OSS testing, until resolved, they will serve as an effective barrier to CLEC entry or business expansion inside Ameritech's ILEC service territory.

Ameritech points to numerous interconnection agreements as evidence of the openness

of its local exchange market. However, Indiana CLEC front-runners have fought long, hard legal battles to reach an arbitrated “agreement” with Ameritech, only to find the IURC’s arbitration decision tied up in federal review proceedings and appeals for many months or even years. In pending appeals of Orders issued in Cause Nos. 40611 and 40611-S1, Ameritech challenges the IURC’s legal authority to order Ameritech to make interconnection terms available via tariff. Instead, Ameritech argues that the only way for CLECs to reach agreement with Ameritech on the terms of interconnection is through the negotiation and arbitration procedures established in TA-96, as implemented in Indiana through generic orders issued in Cause No. 39983. Ameritech’s position presumably ignores the fact that, as the incumbent monopolist, its market power precludes any true negotiation between market equals. Therefore, disputes will still have to be resolved through arbitrations; and Ameritech’s propensity to appeal adverse IURC decisions will inject significant delay and uncertainty into that process. The OUCC continues to believe that a UNE tariff is critical to the establishment of competition in Ameritech Indiana’s ILEC service territory and that it is well within the IURC’s power to order the filing of such a tariff. If ordered by the IURC, such action is not preempted by federal law, since it is entirely consistent with federal market-opening objectives – especially when the state utility regulatory body that best understands the current stage of development of competition in Indiana’s local exchange market believes that it is necessary to tariff UNEs, at least in the initial phase of a slow, but ongoing, market-opening process.

The IURC is well aware of the post-271 approval backsliding in OSS performance in Texas and New York that led to the ordering of remedy plans in those states. Experience

in those and other states dictates that strong disincentives must be available to prevent subsequent failures in OSS performance. The OUCC believes that remedies paid under a remedy plan may not be sufficient to compensate CLECs for their business losses – including loss of goodwill. However, regulators should at least ensure that remedy plans are strong enough to have a deterrent effect on Regional Bell Operating Companies (“RBOCs”) to prevent post-271 backsliding on OSS performance measures. Given Ameritech’s continued market power and continued ownership of bottleneck local exchange facilities, it is critical that an effective remedy plan be in place, and have a chance to prove its effectiveness, before Ameritech receives 271 approval. Even with such a plan in place, the risks CLECs face due to the proverbial “fox guarding the hen house” remain quite real (especially in light of SBC’s fining history in other states and at the FCC for violation of state and federal merger approval requirements related to SBC’s merger with Ameritech several years ago).

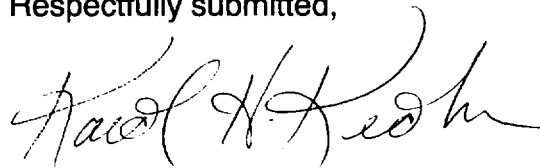
Ameritech will argue that the interest of increasing competitive alternatives in Indiana’s inter-LATA, interexchange service market compel the IURC to recommend 271 approval for Ameritech Indiana at this time. However, the IURC’s web page demonstrates that Indiana has numerous competitive inter-LATA service providers. Further, IURC orders in Cause No. 38149, Indiana’s generic intra-state, interexchange service competition proceeding, demonstrate that there is sufficient competition in Indiana for interexchange services that the Commission has eliminated tariff filing requirements for resellers of interexchange service. The real issue the IURC should focus on in this proceeding is whether the local exchange market is sufficiently competitive to justify unleashing the giant

and permitting Ameritech – Indiana’s RBOC – to enter the inter-LATA interexchange market. Once that permission is granted, the TA-96 market-opening “carrot” will be gone. Therefore the true “public interest” at stake in this proceeding is whether Ameritech has irreversibly opened its market to competition, justifying the relinquishment of further control under Section 271 of TA-96. Indiana statistics, as documented in reports to the Regulatory Flexibility Committee, do not support such a result at this time.

The real test of whether Ameritech has irreversibly opened its market to competition is whether Ameritech customers have access to multiple providers and the opportunity to transfer their local service from Ameritech to a competitor without an interruption in their local service. That test is not met in Indiana and is not likely to be met anytime soon, given pending appeals of key IURC wholesale decisions.

The OUCC anticipates that the CLECs participating in this proceeding will provide more specific examples of the types of problems they have encountered in dealing with Ameritech as a wholesale supplier. The OUCC believes that these problems will eventually be corrected by Ameritech. The OUCC acknowledges that the process of developing an OSS system is a complicated one. However, until the process has successfully been completed, it is premature to consider Ameritech’s request and premature for this Commission to recommend that the FCC grant Section 271 approval to Ameritech Indiana.

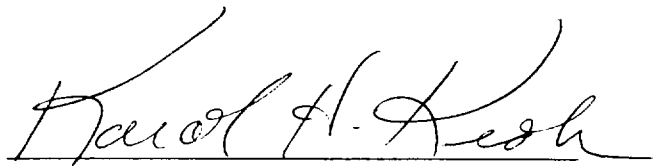
Respectfully submitted,

A handwritten signature in black ink, appearing to read "Karol H. Krohn". The signature is fluid and cursive, with a large loop at the end.

Karol H. Krohn, Attorney No. 5566-82
Assistant Commissioner, Oklahoma

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing **Indiana Office of Utility Consumer Counselor's Initial Comments Concerning the Status of Ameritech Indiana's Alleged Compliance with Market Opening Requirements in 47 U.S.C. § 271** has been served electronically in accordance with the IURC's service rule for this proceeding on December 11, 2002.


Karol H. Krohn

INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR

Indiana Government Center North
100 N. Senate Avenue, Room N501
Indianapolis, IN 46204-2215
317/232-2494 – Telephone
317/232-5923 - Facsimile